

REMARKS

I. STATUS OF CLAIMS

Claims 355-368 are pending in this application. Claims 355-358, 361-365, and 368 are amended herein. The specification provides written description support for these claim amendments.

II. REJECTIONS UNDER 35 U.S.C. § 112

A. Rejection under 35 U.S.C. § 112, first paragraph

Claims 355-361 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with written description requirement. Office Action, p. 2. The Examiner asserts that “[t]here is no support in the specification for claims drawn to species belonging to [a] structuring polymer, which is **“ethylenediamine/stearyl dimer tallate copolymer.”** *Id.* at p. 3 (emphasis in original).

Applicants respectfully disagree and maintain that one of ordinary skill would have known that the species of polymer, “ethylenediamine/stearyl dimer tallate copolymer,” recited in claims 355-361 was known by the trade name Uniclear[®], as set forth in the specification, at the time the application was filed for at least the reasons of record.

Solely in an effort to advance prosecution, Applicants previously submitted page 606 of the International Cosmetic Ingredient Dictionary and Handbook (“CTFA”), as Exhibit 1, and Redacted Proprietary Documents, as Exhibit 2, with the April 28, 2008, Reply to Office Communication, as evidence that ethylenediamine/stearyl dimer tallate and dilinoleate copolymers were known as Uniclear[®] prior to the filing date of the present application.

In addition to the extensive evidence and statements already of record, Applicants now submit herewith as Exhibit 1, a redacted copy of an Expert Report of Robert Lochhead, Ph.D., submitted on December 15, 2006, in *L'Oréal S.A. v. Estée Lauder Co.*, Civil Action No. 04-1660 (HAA) (D.N.J. filed Apr. 7, 2004), and Exhibit 2, a letter from the Cosmetic Toiletry and Fragrance Association ("CFTA") dated December 14, 1999, and relied upon in the Expert Report. At paragraph 14 of his report, Dr. Lochhead states that persons skilled in the art reading the disclosure regarding Uniclear® in the specification of the patent at issue (which corresponds to the present specification) would have understood that the inventors contemplated use of ethylenediamine/stearyl dimer tallate copolymer as a structuring polymer. Applicants submit that the teachings provided in the evidence of record, as well as the teachings provided by the additional evidence submitted herewith, show that the ethylenediamine/stearyl dimer tallate copolymer was known by those of ordinary skill as Uniclear® at the time of filing of the present application. Accordingly, Applicants submit the specification, as filed, provides written description support for claims 355-361.

In view of the foregoing, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

B. Rejection under 35 U.S.C. § 112, second paragraph

Claims 355-368 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Office Action at p. 7.

The Examiner asserts that the recitation "chosen from" implies more than one Markush member. *Id.* However, the Examiner asserts that the claims only recite one copolymer. *Id.* at pp. 7-8. Therefore, the Examiner contends that the use of the

recitation "at least one" along with the phrase "chosen from" renders the claims unclear. *Id.* In addition, the Examiner asserts that the meaning of the phrases "care product for skin or hair or lips," and "care or treatment composition for keratin fibers," used in the claims are unclear. *Id.* at p. 8.

Contrary to the Examiner's assertions, the use of the phrase "at least one" along with the phrase "chosen from," does not render the claims unclear. As presently written, the claimed compositions, which comprise "at least one structuring polymer," can include more than one structuring polymer as long as one of the structuring polymers in the claimed composition is the claimed copolymer. Therefore, Applicants submit that the scope of the subject matter embraced by the claims is clear and definite.

In addition, Applicants submit that the phrases "care product for skin, lips or hair," and "care or treatment composition for keratin fibers" are clear and definite. However, in order to advance prosecution, Applicants have deleted the recitation "product for skin, lips, or hair" from claims 355 and 362, amended the preamble of claims 358 and 365 to recite "A method comprising applying a cosmetic composition to a keratin material, said composition comprising," and amended the preamble in claims 356, 357, 361, 363, 364, and 368 to simply recite "A cosmetic composition," rather than a makeup, treatment, or care composition. Applicants submit that the subject matter embraced by the amended claims is clear and definite.

In view of the foregoing, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

III. OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTIONS

The Examiner rejects the pending claims under the judicially-created doctrine of obviousness-type double patenting on twelve different grounds:

Claims 355-361 are rejected for obviousness-type double patenting over claims 1-4 of U.S. Patent No. 6,716,420 ("the '420 patent") in view of U.S. Patent No. 5,289,363 ("the '363 patent"). Office Action at p. 9;

Claims 355-359 and 361 are rejected for obviousness-type double patenting over claims 1 and 3 of U.S. Patent No. 6,835,399 ("the '399 patent") in view of U.S. Patent No. 5,945,095 ("the '095 patent"). Office Action at p. 10;

Claims 355-359 and 362-366 are rejected for obviousness-type double patenting over claims 1-2 of U.S. Patent No. 6,869,594 ("the '594 patent") in view of the '095 patent". Office Action at p. 11;

Claims 355-358 are rejected for obviousness-type double patenting over claims 1-2 and 4-6 of U.S. Patent No. 6,881,400 ("the '400 patent") in view of the '095 patent. Office Action at p. 13;

Claims 355-358 and 361-364 are rejected for obviousness-type double patenting over claims 1-7 of U.S. Patent No. 6,979,469 ("the '469 patent") in view of U.S. Patent No. 6,214,329 ("the '329 patent"). Office Action at p. 14;

Claims 355-359 and 361 are rejected for obviousness-type double patenting over claims 1-6 of U.S. Patent No. 7,008,619 ("the '619 patent") in view of the '363 patent. Office Action at p. 15;

Claims 355-358 and 362-365 are rejected for obviousness-type double patenting over claims 1-6, 13 and 15 of U.S. Patent No. 7,008,619 ("the '619 patent") in view of the '329 patent. Office Action at p. 17;

Claims 355-356 and 362-363 are rejected for obviousness-type double patenting over claims 1-3 and 17 of U.S. Patent No. 7,025,953 ("the '953 patent"). Office Action at p. 18;

Claims 356-357 and 363-364 are rejected for obviousness-type double patenting over claim 1 of 7,025,953 ("the '953 patent"). Office Action at p. 19;

Claims 355-359, 361-366, and 368 are rejected for obviousness-type double patenting over claims 1, 18-21, 28-29 and 30-35 of U.S. Patent No. 7,314,612 ("the '612 patent"). Office Action at p. 20;

Claims 355-358, 361-366 and 368 are rejected for obviousness-type double patenting over claims 1 and 5 of U.S. Patent No. 7,351,418 ("the '418 patent") in view of the '095 patent. Office Action at p. 22;

Claims 355-358, 361-366 and 368 are rejected for obviousness-type double patenting over claims 1 and 29-30 of U.S. Patent No. 7,410,636 ("the '636 patent") in view of U.S. Patent No. 6,491,931 ("the '931 patent"). Office Action at p. 23.

While Applicants respectfully submit that the present invention is not obvious over any of the claims in the patents cited by the Examiner, to expedite allowance of the present application, Applicants submit herewith a terminal disclaimer to obviate each of the obviousness-type double patenting rejections. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw all of the obviousness-type double patenting rejections.

IV. COMMONLY ASSIGNED CO-PENDING APPLICATIONS AND PATENTS

In previous submissions, Applicants noted information regarding co-pending applications and patents, and submitted copies of the pending claims as of the date of those submissions for every case identified. Applicants submit herewith, as Exhibit 3, a copy of the pending and/or issued claims of Application Nos. 10/450,108, and 10/993,430, which have been amended or issued since April 28, 2008. Applicants

submit those claims for the Office's convenience in evaluating any potential issues regarding statutory or obviousness-type double patenting.

V. CONCLUSION

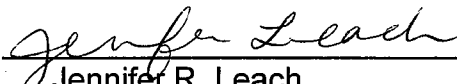
In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 5, 2009

By: 
Jennifer R. Leach
Reg. No. 54,257

Attachments:

- Exhibit 1 -** Expert Report of Robert Lochhead, Ph.D., submitted on December 15, 2006, in L'Oréal S.A. v. Estée Lauder Co., Civil Action No. 04-1660 (HAA) (D.N.J. filed Apr. 7, 2004);
- Exhibit 2 -** Letter from the Cosmetic Toiletry and Fragrance Association ("CFTA") dated December 14, 1999; and
- Exhibit 3 -** Copies of Claims from Two (2) Copending Applications.